

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: David Quigley, Planning and Zoning Manager (954-797-1075)

PREPARED BY: David Quigley, Planning and Zoning Manager (954-797-1075)

SUBJECT: Resolution

AFFECTED DISTRICT: District 1 and Townwide

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: AGREEMENT - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR AND TOWN ADMINISTRATOR TO EXECUTE AN AGREEMENT WITH BROWARD COUNTY REGARDING AFFORDABLE HOUSING WITHIN THE TRANSIT ORIENTED CORRIDOR

REPORT IN BRIEF: In 2005, the Town of Davie initiated an amendment to the Broward County Land Use Plan to establish a Transit Oriented Corridor within the Town. In order to overcome County concerns regarding the enforceability of certain affordable housing provisions included within the TOC amendment, Staff is recommending that the Town enter into a formal agreement with the County concerning the minimum number of years that an affordable housing unit must remain affordable. Broward County adopted the TOC amendment on June 23, 2009 with the understanding that a formal agreement would be executed prior to the Town submitting its revised comprehensive plan for recertification by the County.

PREVIOUS ACTIONS: None.

CONCURRENCES: N/A

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

Additional Comments:

RECOMMENDATION(S): Motion to approve resolution

Attachment(s): Resolution, Agreement

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA,
AUTHORIZING THE MAYOR AND TOWN ADMINISTRATOR TO
EXECUTE AN AGREEMENT WITH BROWARD COUNTY
REGARDING AFFORDABLE HOUSING WITHIN THE TRANSIT
ORIENTED CORRIDOR.

WHEREAS, the Town of Davie initiated an amendment to the Broward County
Land Use Plan (PC 06-19) to establish a Transit Oriented Corridor ("TOC") within the
Town of Davie; and

WHEREAS, in the effort to obtain approval of Amendment PC 06-19, the Town
of Davie has voluntarily agreed that affordable housing units within the TOC area should
be bound by certain provisions of the Broward County affordable housing program; and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN
OF DAVIE, FLORIDA.

SECTION 1. The Town Council of the Town of Davie hereby authorizes the
Mayor, Town Clerk and Town Administrator to execute the agreement provided in
Attachment "A".

SECTION 2: This resolution shall take effect immediately upon its passage and
adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2009

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2009

Return recorded document to:

Maite Azcoitia, Deputy County Attorney
Broward County Attorney's Office
115 S. Andrews Avenue, Rm 423
Ft. Lauderdale, FL 33301

Document prepared by:

David Quigley, Planning and Zoning Manager
Town of Davie
6591 Orange Drive
Davie, FL 33314

NOTICE: DEVELOPERS, PURCHASERS, GRANTEES, HEIRS, SUCCESSORS AND ASSIGNS OF ANY INTEREST IN THE PROPERTY SET FORTH ON EXHIBIT "A" ARE HEREBY PUT ON NOTICE OF THE OBLIGATIONS SET FORTH WITHIN THIS AGREEMENT WHICH SHALL RUN WITH THE PROPERTY IN PERPETUITY.

AFFORDABLE HOUSING AGREEMENT

This is an Agreement, made and entered into by and between: **BROWARD COUNTY**, a political subdivision of the state of Florida, hereinafter referred to as "COUNTY,"

AND

TOWN OF DAVIE, a Florida municipal corporation, hereinafter referred to as "TOWN."

RECITALS

WHEREAS, TOWN is in the process of approving a redevelopment plan for the property more particularly described in Exhibit "A," attached hereto ("Property"); and

WHEREAS, TOWN initiated a proposed Land Use Plan Amendment PC 06-19 ("Amendment PC 06-19") for the Property establishing a Transit Oriented Corridor ("TOC"), to promote economic vitality and community redevelopment within TOWN, a copy of which is attached hereto as Exhibit "B"; and

WHEREAS, TOWN is proposing the inclusion of 6,428 residential units within the TOC; and

WHEREAS, on June 23, 2009, COUNTY approved Amendment 06-19 subject to the TOWN's execution of an agreement which will ensure that at least fifteen percent (15%) of the residential units shall be provided as affordable, as defined by the Broward County Land Use Plan, for a period of fifteen (15) years; and

WHEREAS, COUNTY and TOWN mutually agree that a minimum of fifteen percent (15%) of the residential units within the TOC shall have restrictive covenants which maintain the required level of affordability for a minimum of fifteen (15) years; and

WHEREAS, TOWN has voluntarily agreed to enter into this Agreement as a condition of approval of Amendment PC 06-19 to enable legal enforcement of the commitments made to COUNTY herein; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, and covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, COUNTY and TOWN agree as follows:

1. RECITALS

The above recitals are true and correct and incorporated herein by reference.

2. AFFORDABLE HOUSING PROVISIONS

2.01 TOWN agrees that fifteen percent (15%) of the residential units within the TOC shall qualify as "affordable housing," as defined by the Broward County Land Use Plan. No development permit shall be issued by TOWN for said affordable housing units unless the landowner executes a restrictive covenant ensuring that the unit will continue to qualify as "affordable housing" for at least fifteen (15) years.

2.02 Upon request by COUNTY, TOWN agrees to provide COUNTY with a status report of total permitted residential units and total permitted affordable units within the TOC in order for COUNTY to ensure that TOWN is complying with the affordability requirements.

3. DEFAULT

In the event of any default or breach of any of the terms of this Agreement, it is specifically acknowledged and agreed that either party shall, in addition to all other remedies which may be available in law or equity, have the right to enforce this Agreement by specific performance, injunctive relief, prohibition or mandamus to compel the other party to abide by the terms of this Agreement, and all such remedies shall be cumulative.

4. GOVERNMENTAL IMMUNITY

TOWN is a municipality as defined in Section 768.28, Florida Statutes, and COUNTY is a political subdivision of the state of Florida as defined in Section 768.28, Florida Statutes. Each agrees to be fully responsible for acts and omissions of their elected officials, agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a municipality or political subdivision of the state of Florida to be sued by third parties in any matter arising out of this Agreement or any other contract.

5. CONTRACT INDEMNIFICATION BY TOWN

As consideration for COUNTY entering into this Agreement with TOWN and adopting Amendment PC 06-19, TOWN shall, to the full extent permitted by law, at all times indemnify, hold harmless and, at the County Attorney's option, defend or pay for an attorney selected by the County Attorney to defend COUNTY, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, related in any respect to the subject matter of this Agreement, the TOC, or any development within the TOC. This includes, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property, or resulting from injuries or damages sustained by any person or property, or resulting from any inverse condemnation action or other takings related claims. In the event any lawsuit or other proceeding is brought against COUNTY by reason of any such claim, cause of action or demand, TOWN shall, upon written notice from COUNTY, resist and defend such lawsuit or proceeding by counsel satisfactory to COUNTY or, at COUNTY's option, pay for an attorney selected by County Attorney to defend COUNTY. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement.

6. INSURANCE

TOWN is an entity subject to Section 768.28, Florida Statutes, and TOWN shall furnish COUNTY with written verification of liability protection in accordance with State law prior to final execution of this Agreement.

7. NOTICES

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving of notice shall remain as set forth herein until changed in writing

in the matter provided in this section. For the present, the parties designate the following as the respective places for giving of notice:

FOR COUNTY:

County Administrator
115 South Andrews Avenue, Room 409
Fort Lauderdale, FL 33301

WITH COPY TO:

County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, FL 33301

FOR TOWN:

Town Administrator
Town of Davie
6591 Orange Drive
Davie, FL 33314

8. THIRD PARTY BENEFICIARIES

Neither TOWN nor COUNTY intends to directly or substantially benefit a third party by this Agreement. The parties expressly acknowledge that it is not their intent to create any rights in or obligations to any third person or entity by this Agreement; therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

9. WAIVER OF BREACH

COUNTY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless it is in writing, signed by COUNTY, and such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver, shall not be deemed a waiver of any subsequent breach, and shall not be construed to be a modification of any of the terms of this Agreement.

10. SEVERANCE

In the event that a provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall continue to be effective.

11. JOINT PREPARATION AND INTERPRETATION

The parties acknowledge that they have sought and received whatever competent advice and counsel necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been a joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

12. CONSTRUCTION OF AGREEMENT; COOPERATION

The parties agree that they will cooperate, act in good faith, and make best efforts to accomplish any and all of the terms, conditions, and provisions of this Agreement, and shall take all appropriate and necessary actions and execution such additional documents as are necessary to effectuate this Agreement.

13. PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 19 of this Agreement shall prevail and be given effect.

14. JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be in such state courts, forsaking any other jurisdiction which either may claim by virtue of its residency or other jurisdictional device. By entering into this Agreement, TOWN and COUNTY hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Agreement.

15. AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by COUNTY and TOWN, or others delegated authority to or otherwise authorized to execute same on their behalf.

16. PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

17. INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits "A," and "B" are incorporated into and made a part of this Agreement.

18. RECORDING OF AGREEMENT

TOWN agrees to record this Agreement in the Official Records of Broward County, Florida, at its expense.

19. MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have made and executed this Interlocal Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor, authorized to execute same by Board action on the 23rd day of June, 2009, and TOWN OF DAVIE, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

County Administrator and

By _____

Ex-Officio Clerk of

Mayor

the Board of County
Commissioners of Broward
County, Florida

_____, 20____ day of
_____.

Approved as to form by
Office of County Attorney
Broward County, Florida
JEFFREY J. NEWTON, County Attorney
Governmental Center, Suite 423

115 South Andrews Avenue
Fort

Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By _____

Maite Azcoitia
Deputy County Attorney

AFFORDABLE HOUSING AGREEMENT BETWEEN BROWARD COUNTY AND
TOWN OF DAVIE RELATED TO DAVIE TRANSIT ORIENTED CORRIDOR

TOWN

ATTEST:

TOWN
OF DAVIE

Town Clerk

By _____
Town Administrator

_____ day of _____, 20____.

Approved as to Form:

By _____
John Rayson, Town Attorney

MA/
6/1/09
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#07-401.14

EXHIBIT "A"

Town of Davie Areawide DRI Legal Description

Point of Beginning, being at a point on the Northerly extension of the East right-of-way line of the Sunshine State Parkway that intersects with the North right-of-way line of State Road No. 84, also being the South right-of-way line of the North New River Canal (C-11 North); thence Southeasterly along said South right-of-way line to the Northwest corner of the East one-half (E 1/2) of Tract 1, Tier 7 in Section 24, Township 50 South, Range 41 East of said Plat of "JOHN W. NEWMAN'S SURVEY"; thence Northeasterly along an extension of the Westerly line of said East one-half (E 1/2) of said Tract 1 to the South bank of said North New River Canal; thence Southeasterly along said bank to the Westerly right-of-way line of State Road No. 7; thence Northeasterly along said right-of-way line to the centerline of said North New River Canal; thence Northwesterly along said centerline to the Southwesterly extension of the West right-of-way line of Southwest 41st Avenue; thence Northeasterly along said right-of-way line and its extension to the North line of Section 24, Township 50 South, Range 41 East; thence Easterly to a point on the Easterly right-of-way line of Southwest 41st Avenue being 298.34 feet Northerly from the Southwest corner of Tract 2, Tier 4 of said Plat of "JOHN W. NEWMAN'S SURVEY"; thence Southeasterly to a point on the Westerly right-of-way line of State Road No. 7, being 300.00 feet, (as measured along said Westerly right-of-way line) from the Southerly line of said Tract 2; thence Northerly along said Westerly right-of-way line to its intersection with the Westerly prolongation of the North right-of-way line of Riverland Road; thence Easterly along said prolongation to the Easterly right-of-way line of State Road No. 7; thence Southerly along said East right-of-way line to an intersection with the centerline of said North New River Canal; thence Southwesterly along said Easterly right-of-way line to an intersection with the North line of Section 25, Township 50 South, Range 41 East; thence Westerly along said North line to an intersection with the Northerly prolongation of the East line of the West three-quarters (W 3/4) of Tract 3 of said Section 25; thence Southerly along said prolongation and said East line to the Southeast corner of said West three-quarters (W 3/4) of the North one-half (N 1/2) of the North one-half (N 1/2) of said Tract 3; thence Westerly along the South line of the West three-quarters (W 3/4) of the North one-half (N 1/2) of the North one-half (N 1/2) of said Tract 3 to the Easterly right-of-way line of State Road No. 7; thence Southwesterly along said Easterly right-of-way line to a point radially Southeast from the intersection of the West line of Tract 20 in said Section 25 of said Plat of "JOHN W. NEWMAN'S SURVEY" with the Westerly right-of-way line of State Road No. 7; thence radially Northwest from said point to the Westerly right-of-way line of State Road No. 7; thence Southerly along said Westerly right-of-way line to an intersection with the centerline of said South New River Canal; thence Easterly along said centerline to an intersection with the East right-of-way line of State Road No. 7; thence Southerly along said right-of-way line to an intersection with the easterly prolongation of the North line of Tracts 11 and 12 in Section 36, Township 50 South, Range 41 East

of "JOHN W. NEWMAN'S SURVEY"; thence Westerly along said line to an intersection with the East right-of-way line of the Sunshine State Parkway; thence Northerly along the East right-of-way line of the Sunshine State Parkway to the Point of Beginning.

ORDINANCE NO. 2009-48

AN ORDINANCE OF BROWARD COUNTY, FLORIDA, ADOPTING AN AMENDMENT AS PART OF THE FIRST ANNUAL 2009 AMENDMENTS TO THE BROWARD COUNTY COMPREHENSIVE PLAN; AMENDING THE 1989 BROWARD COUNTY LAND USE PLAN MAP LOCATED IN THE TOWN OF DAVIE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

WHEREAS, Broward County adopted the 1989 Broward County Comprehensive Plan on March 1, 1989; and

WHEREAS, the Department of Community Affairs has found the Broward County Comprehensive Plan in compliance with the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Broward County now wishes to propose amendments to the Plan; and

WHEREAS, the Planning Council as the local planning agency for the Broward County Land Use Plan has held its hearings on June 22, 2006, and November 30, 2006, with due public notice; and

WHEREAS, the Board of County Commissioners held its transmittal public hearing on August 22, 2006, having complied with the notice requirements specified in Subsection 163.3184(15), Florida Statutes; and

WHEREAS, the Board of County Commissioners held an adoption public hearing on June 23, 2009, at 2:00 p.m. [also complying with the notice requirements specified in Subsection 163.3184(15), Florida Statutes] at which public comment was accepted, and the objections, recommendations, and comments of the Department of Community Affairs were considered; and

1 WHEREAS, the Board of County Commissioners after due consideration of all
2 matters hereby finds that the following amendment to the 1989 Broward County
3 Comprehensive Plan is consistent with the State Plan, Regional Plan, and the Broward
4 County Comprehensive Plan; complies with the requirements of the Local Government
5 Comprehensive Planning and Land Development Regulation Act; and is in the best
6 interests of the health, safety, and welfare of the residents of Broward County; and
7 WHEREAS, the proposed amendment constitutes an amendment as part of
8 Broward County's permitted first annual amendments to the Plan for 2009.
9 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
10 BROWARD COUNTY, FLORIDA:
11 Section 1. The 1989 Broward County Land Use Plan is hereby amended by
12 Amendment PC 06-19, which is an amendment to the 1989 Broward County Land Use
13 Plan Map located in the Town of Davie, as set forth in Exhibit A, attached hereto and
14 incorporated herein.
15 Section 2. SEVERABILITY.
16 If any portion of this Ordinance is determined by any Court to be invalid, the
17 invalid portion shall be stricken, and such striking shall not affect the validity of the
18 remainder of this Ordinance. If any Court determines that this Ordinance, or any portion
19 hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies),
20 or circumstance(s), such determination shall not affect the applicability hereof to any
21 other individual, group, entity, property, or circumstance.
22 Section 3. EFFECTIVE DATE.
23 1. The effective date of the plan amendment set forth in this Ordinance shall
24 be the latter of:

1 (a) The date a final order is issued by the Department of Community Affairs
2 finding the amendment to be in compliance in accordance with Section 163.3184,
3 Florida Statutes.

4 (b) The date a final order is issued by the Administration Commission finding
5 the amendment to be in compliance in accordance with Section 163.3184, Florida
6 Statutes. The Department's notice of intent to find a plan amendment in compliance
7 shall be deemed to be a final order if no timely petition is filed challenging the
8 amendment.

9 (c) If a Declaration of Restrictive Covenants is applicable, as per Exhibit B,
10 the date the Declaration of Restrictive Covenants is recorded in the Public Records of
11 Broward County.

12 2. This Ordinance shall become effective as provided by law..

13 ENACTED June 23, 2009

14 FILED WITH THE DEPARTMENT OF STATE

15 EFFECTIVE

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23 MA/lt
5/13/09
#06-401.33
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EXHIBIT A

BROWARD COUNTY LAND USE PLAN FUTURE LAND USE DESIGNATIONS

Amendment PC 06-19

Current Land Uses: 614.9 ACRES OF INDUSTRIAL, 182.5 ACRES OF TRANSPORTATION, 47.9 ACRES OF COMMERCIAL, 39.7 ACRES OF LOW-MEDIUM (10) RESIDENTIAL, 13.6 ACRES OF COMMUNITY FACILITIES, AND 5.1 ACRES OF UTILITIES

Proposed Land Use: TRANSIT ORIENTED CORRIDOR

Acreage: Approximately 903.7 acres

